

**United States Department of Labor
Employees' Compensation Appeals Board**

C.W., Appellant)

and)

DEPARTMENT OF THE AIR FORCE, AIR)
LOGISTICS CENTER, WARNER ROBINS AIR)
FORCE BASE, GA, Employer)

**Docket No. 13-537
Issued: July 29, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 7, 2013 appellant filed a timely appeal from the July 16, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On May 26, 2010 appellant, then a 49-year-old executive support specialist, filed an occupational disease claim alleging that she sustained an emotional condition due to her work. She stated that on February 3, 2010 her “place of employment became a hostile environment.”

In support of her claim, appellant submitted an undated statement in which she indicated that she was claiming the medical conditions of spiked blood pressure, panic, anxiety and depression. She asserted that she was exposed to on-the-job stressors beginning on June 12, 2009 when her supervisor, Dana Stanley, gave her additional duties of quality and safety timekeeping. Appellant indicated that, in August 2009, she had a dispute with Ms. Stanley and Gregory Custer, another supervisor, about these additional duties but Ms. Stanley and Mr. Custer responded that these additional duties were not permanent. She claimed that in August 2009 Ms. Stanley wrongly denied her compensatory time for a base-wide inspection. Appellant indicated that she voiced concerns to Ms. Stanley and Mr. Custer about several employees who indicated that they would not perform certain actions, but appellant asserted that these supervisors did not adequately respond to her concerns. She claimed that on November 18, 2009 Mr. Custer harassed her by insisting she worked for him.

Appellant further alleged that on December 4, 2009 she had a conflict with Jennifer Keister, a coworker, about a suspense action and that on December 8, 2009 Ms. Stanley began verbally abusing her in front of Ms. Keister. Appellant alleged that on February 3, 2010 she had an altercation with Ms. Stanley when she allowed Mr. Custer to assign work to appellant that should have been assigned to Ms. Keister. Ms. Stanley allegedly stated in a raised voice and offensive tone that, if appellant did not want to perform the assigned task, she would do it herself. Appellant indicated that she then had an exchange with Ms. Stanley about a time card and that when she wanted to go home due to a headache Ms. Stanley wanted to talk about work matters. She indicated that she did not want to talk about work matters and Ms. Stanley stated, “You will talk to me!” Appellant stated that she responded, “You don’t want to go there. We’ll talk tomorrow.” She asserted that Carl Unholz improperly failed to accept an Equal Employment Opportunity (EEO) complaint letter from her on April 30, 2010. Appellant claimed that she was humiliated when another supervisor, Captain Phillip Edgar, took the letter out of Mr. Unholz’ hands and “tossed it at her feet.”

In an undated statement, Ms. Stanley acknowledged talking to appellant about various work assignments, including the occasion on February 3, 2010, but she denied ever speaking to appellant in an abusive tone or otherwise subjecting her to harassment or discrimination. She expressed her opinion that appellant overreacted to a discussion of a work task on February 3, 2010. Ms. Stanley indicated that, on July 9, 2010, appellant was sent a leave-without-pay letter that was sent to all employees who had reached 100 hours of leave without pay. She further indicated that there were no situations where appellant was called upon to do duties other than her own.

In an April 30, 2010 memorandum, Mr. Unholz indicated that it was not proper for him to accept appellant’s EEO complaint on April 30, 2010 because he was not the proper person to accept such a complaint. He stated that he advised appellant to follow the proper chain of command. In an undated statement, Captain Edgar acknowledged that he took the EEO

complaint letter from Mr. Unholz' hands and set it down at appellant's feet when she became agitated and demanded that the letter be delivered to Major General Peyer. Captain Edgar did not feel that it would have been appropriate to deliver the letter to Major General Peyer.

Appellant submitted numerous records from her EEO complaints and medical evidence including reports from Dr. Yvonne McAllister, a Board-certified family practitioner, who opined that appellant had uncontrolled hypertension, chest pain, palpitations, anxiety and depression causally related to on-the-job stress.

In an October 26, 2010 decision, OWCP denied appellant's emotional condition claim on the grounds that she had not established any compensable employment factors. It found that she had not established harassment, discrimination or wrongdoing with respect to administrative matters.

Appellant requested a hearing with an OWCP hearing representative. At the hearing held on April 7, 2011 she further discussed the incidents and conditions at work, which she believed caused the emotional condition. After the hearing, appellant submitted a January 27, 2011 settlement agreement wherein she agreed to not institute a discrimination lawsuit against the employing establishment and to withdraw her EEO complaints. The employing establishment agreed to restore 144 hours of annual leave and 74 hours of sick leave to her, compensate her for 323 hours of leave without pay, change her 2010 performance rating from a three to a four rating and pay attorney fees in the amount of \$2,500.00. The agreement stated, "This [a]greement does not constitute an admission by the [employing establishment] of any violation of the Civil Rights Act of 1964, as amended..." After the hearing, appellant also submitted medical evidence including reports dated between 2009 and 2011.

In a June 21, 2011 decision, the hearing representative affirmed OWCP's October 26, 2010 decision denying appellant's emotional condition, noting that she still had not established any work factors. The hearing representative noted that the January 27, 2011 settlement agreement explicitly did not find any wrongdoing by the employment establishment.

Appellant requested reconsideration of her claim and submitted copies of several performance evaluations. She also resubmitted a number of documents which had previously been in the record.

In a July 16, 2012 decision, OWCP affirmed its June 21, 2011 decision, noting that the newly submitted evidence did not establish any compensable work factors.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.² On the other hand, the

² *Lillian Cutler*, 28 ECAB 125 (1976).

disability is not covered where it results from such factors as an employee's fear of a reduction in force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.³

To the extent that disputes and incidents alleged as constituting harassment or discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁴ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.⁵

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁶ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁷ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁸

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁹ This burden includes the submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹⁰

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed

³ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁴ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁵ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁶ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁷ *William H. Fortner*, 49 ECAB 324 (1998).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁰ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

factors of employment and may not be considered.¹¹ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹²

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions at her workplace. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Culter*.¹³ Rather, appellant has alleged error and abuse in administrative matters and harassment on the part of supervisors and coworkers.

Appellant claimed a number of work factors with regard to administrative or personnel matters. She asserted that her supervisors, Ms. Stanley and Mr. Custer, assigned her unwanted work duties beginning in June 2009 and including an incident on February 3, 2010. Appellant also claimed that she was wrongly denied compensatory time in September 2010 and that Mr. Unholz, another supervisor, improperly failed to accept an EEO complaint letter from her on April 30, 2010.¹⁴ She indicated that she voiced concerns to Ms. Stanley and Mr. Custer about several employees who indicated that they would not perform certain actions, but she asserted that these supervisors did not adequately respond to her concerns. The Board notes that the claimed instances related to administrative and personnel matters and would only be considered work factors if they were established that management committed error or abuse with respect to these matters. The employing establishment's witnesses denied the fact as presented by appellant. Appellant has not submitted evidence to establish her allegations that management committed error or abuse with respect to administrative or personnel matters. She has not submitted any agency grievance decision which finds error or abuse. The record does contain a January 27, 2011 EEO complaint settlement agreement that concerns some of appellant's allegations, but the agreement made no finding of wrongdoing by the employing establishment.¹⁵ In the absence of evidence showing error or abuse, appellant has not established any compensable work factors with respect to administrative and personnel matters.

¹¹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹² *Id.*

¹³ See *Cutler* note 2.

¹⁴ Statements from Mr. Unholz and Captain Edgar indicate that it would not have been appropriate for Mr. Unholz to accept the letter and that appellant became agitated and demanding during the incident.

¹⁵ Although the employing establishment agreed to restore leave and undertake other actions favorable to appellant, the agreement stated, "This [a]greement does not constitute an admission by the [employing establishment] of any violation of the Civil Rights Act of 1964, as amended...."

Appellant alleged that in late 2009 and on February 3, 2010 Ms. Stanley spoke to her in a raised and offensive tone of voice. She claimed that on November 18, 2009 Mr. Custer harassed her by insisting that she worked for him. Appellant further alleged that on December 4, 2009 she had a conflict with Ms. Keister, a coworker, about a suspense action and that on December 8, 2009 Ms. Stanley began verbally abusing her in front of Ms. Keister. She claimed that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment, but she provided no corroborating evidence, such as probative witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁶ Ms. Stanley denied speaking to appellant in a raised and offensive tone of voice and there is no corroborative evidence of record supporting a finding that she did so. Allegations of harassment must be supported by probative evidence and appellant has not submitted such evidence in the present case. Therefore, appellant has not established any compensable work factors with respect to the claimed harassment.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁷

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

¹⁶ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁷ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board